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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,777	10/09/2001	Max Schaldach	7040-45	6887

21324 7590 07/21/2003

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EXAMINER
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THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 07/21/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

09/974,777

Applicant(s)

SCHALDACH ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 5-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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Claims 1, 2, 5-7, 11-30, 47, 48 and 66 are rejected under 35 U.S.C. 102(e) as being anticipated by von Open (6,193,747) for the reasons set forth in paragraph 4 of the Office Action mailed Feb. 12, 2003.

Claims 1, 2 and 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Globerman (5,776,161) for the reasons set forth in paragraph 5 of the Office Action mailed Feb. 12, 2003.

Claims 31-46 and 49-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over von Oepen (6,193,747) in view of Kveen et al. (6,261,319) for the reasons set forth in paragraph 6 of the Office Action mailed Feb. 12, 2003.

Applicant's arguments filed May 12, 2003 have been fully considered but they are not persuasive. The allegation that the bar element portions of von Oepen are not "arranged in a V-shape" as claimed is incorrect. The bar element portions of von Oepen converge toward each other and meet and thus are "arranged in a V-shape" as broadly claimed. The term "V-shape" merely requires the element to be shaped like a "V" rather than being the precise shape of a "V". Even the bar element portions of applicant's invention are not arranged precisely in the shape of a "V" because they are curved while the sides of a "V" are straight. In addition, the top of each of the two arms of a "V" has a short horizontal bar which is absent from the bar element portions of applicant's invention. The allegation that the bar element portions of the first annular

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support portion of von Oepen are not "adapted to extend curvedly in an identical arcuate manner in the longitudinal direction of the stent" as claimed is incorrect. Viewing an annular support portion in figure 5 of von Oepen, the bar element portions include longer ones and shorter ones. Each of the longer bar element portions is identical to all of the other longer bar element portion within the annular support portion. Each of the shorter bar element portion is identical to all of the other shorter bar element portions within the annular support portion. Thus, the bar element portions extend curvedly in an identical arcuate manner as broadly claimed. The allegation that the S-shape of the von Oepen precludes the bar element portions from being curved "uniformly over a length thereof" as claimed is incorrect. Although the direction of curvature changes twice in an "S" along its entire length, the claims merely require the bar element portions to be curved "uniformly over a length thereof" (underlining added) which may be any short portion of the entire length of each bar element portion. These positions apply equally well for the Globerman reference.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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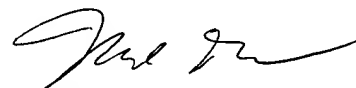
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht  
July 16, 2003

  
MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731